

## CREATING RESERVES

By Robert Laboucane

Prior to the arrival of the newcomers to North America, many hundreds of First Nations had distinct and mutually respected territories. Throughout the course of their histories there had been on-going disputes regarding over-lapping claims and tribal rivalries leading to conflict and wars. Over time the territories were more clearly defined and relationships improved. Many treaties were signed between the various groups promoting military alliances, inter-tribal trade and marriages solidifying their mutual respect.

The boundaries of each tribe's traditional territories were acknowledged and respected, in most cases, and this recognition continues today.

By the middle of the 1800's the British Crown was actively continuing the process of negotiating and making treaty with First Nations. There are 11 historical treaties and hundreds of others covering 80% of Canada today. The last treaty was signed in 1921 in the Northwest Territories, although it was never implemented. In the 1850's some 14 treaties were signed on the southern tip of Vancouver Island called the Douglas Treaties. Most of British Columbia, Quebec and Labrador never were covered by treaty leaving the local First Nations with original Aboriginal title as defined by the Supreme Court of Canada.

For the purpose of this explanation I will use Treaty 6 signed in 1876 on lands that extends from the Rocky Mountains east to the Saskatchewan/Manitoba covering an area of some 313,900 square kilometers.

Today, there are 17 separate and distinct First Nations within this Treaty 6 area including Cree, Saulteaux, Dene and Nakota to name a few.

Within this vast land area these various tribes staked out their traditional territories with the acceptance and support of the other tribes in the region. Trade and commerce flourished, languages and cultures were strong, political governance, and traditional values and mutual respect were well established.

With the demise of the buffalo by the late 1800's, the overwhelming impact of new settlers into their traditional territories and the devastation of diseases among the Aboriginal people making treaty seemed the only alternative to tribal survival.

With the signing of Treaty 6 the government allocated 160 acres of land to each person of a tribe based on the population count at the time. This new Crown land was surveyed and a reserve created for them to reside on within their established traditional territory.

For example, if a First Nation identified 406 band members they would have a reserve surveyed at 65,000 acres (406 x 160 acres).

Then all those people would move onto the designated land and set up their homes and family groups. Later on, a roaming hunting party made up of these tribes people arrived and also settled on this land reserved for this particular tribe. They were also entitled to receive 160 acres each.

Using this typical example, there were 76 band members who were absent when the count was made and were missed in the land allocation. They then approached the local government representative known as the Indian Agent and explained the discrepancy and asked for the additional lands (76 x 160 acres = 12,000 acres). They were told their claim was justified and that the

land would be set aside for them in due course, however in the mean time they should go and settle in with their families and the government would get around to it soon.

120 years later the original 76 members population had now increased to 1500 people. By this time this First Nation people were now Canadian citizens and now allowed by law to actually hire lawyers. A claim was put forward on behalf of the now 1500 people asking for 160 acres each which amounted to 240,000 acres of land they felt was owed to them.

The Supreme Court of Canada rejected this claim, however the original 12,000 acres was accepted and agreed to by the federal government and the courts. So the hunt was on as to where the 12,000 acres of unencumbered crown land might be to make available to this First Nation to resolve this claim.

The government identified 5,000 acres near the original reserve, which they converted to reserve lands, and attached this land to the existing reserve land base. This left 7,000 acres still owed to the First Nation. It seems the only other land available was located in other tribe's traditional territories and was unacceptable to the First Nation.

They could not simply take over land located in other tribe's traditional territories. As a result, the federal government determined the cost of land at current costs and somehow developed a formula to compensate for "loss of use" and allocated the appropriate amount of money to the First Nation.

This process aimed at resolving outstanding obligations to First Nations who did not receive all the reserve land to which they were entitled to under treaty is called Treaty Land Entitlement and has been an on-going process for some 34 years now.

Alberta, Saskatchewan and Manitoba transfer unoccupied or otherwise unencumbered lands and minerals back to the federal government so Canada can fulfill its treaty obligations to First Nations.

Whenever adequate or acceptable lands are not available then the federal government gives money to the tribes to purchase the lands owed.

A few years ago a group of about 28 First Nations in Saskatchewan received the equivalent of \$450 Million to settle their outstanding Treaty Land Entitlement claims. This process continues today in many parts of Canada amounting to many hundreds of millions of dollars including land allocations whenever the lands are made available.

In many cases the First Nations can have the land purchased converted to reserve status or keep the land in fee simple title. Often, upon conversion to reserve lands they also get the mineral rights to the land as well. There are no taxes on reserve land, however should they decide to keep the land in fee simple title they are required to pay all taxes on that land.

With the purchase of private property and then conversion to reserve status industries involved in the natural resources exploration and development are expressing great interest in partnerships with the First Nation landowners.

The property being purchased includes industrial parks within numerous cities and municipalities, commercial properties and farmland as well.

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